

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to establish the  
California Institute for Climate Solutions

Rulemaking 07-09-008

**CORRECTED COMMENTS OF THE CONSUMER FEDERATION OF CALIFORNIA  
ON ORDER INSTITUTING RULEMAKING TO CONSIDER ESTABLISHING  
CALIFORNIA INSTITUTE FOR CLIMATE SOLUTIONS**

In its Order Instituting Rulemaking (“OIR”), the Commission expresses its intent to take \$600 million from customers of investor-owned utilities, at a rate of \$60 million each year, to fund the California Institute for Climate Solutions (“Climate Institute”). The University of California has submitted a proposal for the mission of the Climate Institute which indicates approximately \$353 million of the total budget will be allocated to research, \$79 million to equipment, \$35 million to ‘strategic opportunities’, and \$107 million (26%) to overhead.<sup>1</sup>

Nearly all of the research described in the University’s proposal is already being undertaken by the State, under the direction of the Air Resources Board and the Energy Commission, as prescribed by the Legislature. The University of California, itself, is now performing much of the research proposed to be undertaken by the Climate Institute, funded by appropriations for research and by private donors. CFC understands the critical importance of addressing the issue of climate change, but the

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<sup>1</sup> The remainder will pay for fellows and internship programs, conferences, and education and outreach. OIR, Appendix A, p. 21. The overhead cost is somewhat alarming. In 2004, the legislative Analysts’s Office reported that UC has developed a large revenue stream through the facilities and administration overhead it charges sponsors of faculty research, mostly the federal government and private for- and not-for-profit entities. This annual revenue has increased steadily for the past 20 years and is now around \$3 billion, of which about 55 percent is from the federal government. Analysis of the 2006-07 Budget Bill (Feb. 2007).  
[http://www.lao.ca.gov/analysis\\_2006/cap\\_outlay/co\\_08\\_6440\\_anl06.html](http://www.lao.ca.gov/analysis_2006/cap_outlay/co_08_6440_anl06.html)

level of appropriation of public funds to be devoted to this effort is a decision that should be made by the legislature and the Governor, not by the Public Utilities Commission.

California utility rates are among the highest in the nation and any increase in rates to fund a project like the Climate Institute hurts both individual customers and the California economy as a whole. The Commission's energy should be directed at finding ways to reduce rates, not increase them.

**1. Californians don't need higher utility bills.**

California's average electric rate for all sectors (13.57¢/kWh) is the 6<sup>th</sup> highest rate in the country.<sup>2</sup> Only Alaska, Hawaii, and northeastern states (Connecticut, New York, Massachusetts, New Jersey and Maine) have residential rates higher than the rate charged residential customers in California (14.59 ¢/kWh).<sup>3</sup> The price of gas and electricity is expected to be higher this year than last.

Average winter-season (October 1 to March 31) prices and expenditures for all space-heating fuels are projected to be higher than winter 2006-2007. Residential natural gas prices are expected to average \$13.14 per thousand cubic feet (mcf) this winter compared with \$12.36 per mcf last winter, heating oil prices are expected to average \$2.88 per gallon compared with \$2.48 per gallon last winter, and propane prices are expected to average \$2.28 per gallon compared with \$2.02 per gallon last winter. Residential electricity prices are expected to average 10.3 cents per kilowatthour (kwh) compared with 10.1 cents per kwh last winter.<sup>4</sup>

The price of natural gas is expected to continue rising over the next ten years.<sup>5</sup>

California rates are high because of the many additional costs utilities charge customers, over and above the current cost of providing electricity and gas.

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<sup>2</sup> Nebraska Energy Office at <http://www.neo.ne.gov/statshtml/115.htm>

<sup>3</sup> Energy Information Administration statistics at [www.eia.doe.gov/cneaf/electricity/epm/table5\\_6\\_a.html](http://www.eia.doe.gov/cneaf/electricity/epm/table5_6_a.html)

<sup>4</sup> Energy Information Administration: Short-Term Energy and Winter Fuels Outlook (October 9, 2007 Release) <http://www.eia.doe.gov/emeu/steo/pub/contents.html>

<sup>5</sup> California Energy Commission: Revised Natural Gas Market Assessment (Aug. 2007) at 71. <http://www.energy.ca.gov/2007publications/CEC-200-2007-009/CEC-200-2007-009-SD-REV.PDF>

For example, California residential customers of electric utilities are still paying off the costs of California's experiment with restructuring, including paying off debts the utilities incurred to fund the 10 percent rate decrease when the industry was restructured (A.B. 1890); debts incurred by the Department of Water Resources to purchase power after the energy crisis; the loan made to PG&E to bail it out of bankruptcy and payments to PG&E's creditors. California ratepayers are covering shortfalls in utility revenue when operations fail to produce the earnings forecast in a previous rate case. California ratepayers are also paying to clean up hazardous waste sites; to develop radio transmitting electric meters; to support energy efficiency programs and pay incentives to encourage customers to change demand patterns or generate their own power; and for research into new technologies and ways to transport renewable energy into California. California residential customers of electric and gas companies are also providing subsidies to low-income customers so they can afford California's high rates. An attachment to these Comments lists many of the special accounts created to track costs separately charged to customers and the prices charged to cover these costs.<sup>6</sup>

High utility bills hurt the California economy. High utility prices make it difficult for California businesses to compete with companies based in states where energy costs are lower, or in areas of California served by municipal utilities. Further, high utility prices have both direct and indirect effects on the California economy:

In the short run, a business has two options to offset the higher natural gas costs: pass along some or all of them to its customers; and reduce other non-gas costs by lowering employment or buying less from

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<sup>6</sup> The account descriptions are taken from PG&E tariffs and cases; other utilities have similar charges.

suppliers. In the short run, households are also forced to spend more for natural gas and less for other goods and services. Supplying firms then experience reduced sales, leading them to also reduce purchases from their suppliers, and so forth. If a manufacturing firm that spends more to buy natural gas lays off workers or reduces wages, spending at local retail stores will decline, causing them to reduce employment as sales fall, and so on.<sup>7</sup>

Californians don't need another cost tacked on to their utility bills.

**2. California is Already Engaged in a Massive Effort to Address Climate Change through a Coordinated Effort led by the State Air Resources Board and the California Energy Commission.**

The State Air Resources Board was appointed to ensure coordination among state agencies, “the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders” to implement the state’s plan to address greenhouse gases. Health & Safety Code § 38501(f). The legislature recognized the need for Air Resources Board to “consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers,” to avoid duplication of regulatory requirements. Health & Safety Code §§ 38501(g), 38561(a). But the State Air Resources Board is expected to take the lead role in developing solutions to the problems of greenhouse gas emissions, by adopting regulations and developing a “scoping plan ... for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions ... .” Health & Safety Code §§ 38530, 38560, 38561. In developing the scoping plan, the State Air Resources Board is expected to manage the efficient expenditure of state resources by:

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<sup>7</sup> Global Insight: “The Impacts of Natural Gas Prices on the California Economy: Final Report” (Feb. 2006) <http://www.globalinsight.com/publicDownload/genericContent/natgasfullstudy.pdf>

- “evaluat[ing] the total potential costs and total potential economic and noneconomic benefits of the plan ... using the best available economic models, emission estimate techniques, and other scientific methods.”
- “identify[ing] opportunities for emission reductions measures from all verifiable and enforceable voluntary actions, including, but not limited to, carbon sequestration projects and best management practices.”

Health & Safety Code § 38561(d) & (f). It will have the assistance of “an Economic and Technology Advancement Advisory Committee whose duty is

to advise the state board on activities that will facilitate investment in and implementation of technological research and development opportunities, including, but not limited to, identifying new technologies, research, demonstration projects, funding opportunities, developing state, national, and international partnerships and technology transfer opportunities, and identifying and assessing research and advanced technology investment and incentive opportunities that will assist in the reduction of greenhouse gas emissions.

Health & Safety Code § 38591(d). The legislature and the Governor wisely provided for coordinated, prioritized, and cost-effective expenditure of public funds on climate change research.

The legislature has made a further effort to “encourage cooperation among the various state agencies with energy responsibilities,”<sup>8</sup> by directing the State Energy Resources Conservation and Development Commission (“Energy Commission”) to establish state energy policies which are to be followed by other state agencies,

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<sup>8</sup> State agencies specifically identified in the legislation are: the Public Utilities Commission, the Office of Ratepayer Advocates, the Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles.

including the Public Utilities Commission. The Energy Commission prepares an integrated energy policy report every two years and uses the forecasts and assessments generated thereby to “develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety.” Public Resources Code § 25300-301. The Energy Commission is required to “provide the report to the Public Utilities Commission, the Office of Ratepayer Advocates,” and other state agencies, “[f]or the purpose of ensuring consistency in the underlying information that forms the foundation of energy policies and decisions affecting the state,” and to enable state agencies to “carry out their energy-related duties and responsibilities based upon the information and analyses contained in the report.” Public Resources Code § 25302(f)(*emphasis added*).

“[T]he California Energy Commission, through its Public Interest Energy Research program (“P.I.E.R.”) is now engaged in the kind of research which the University of California proposes be undertaken by the Climate Institute. The energy Commission “established the California Climate Change Center to undertake a broad program of scientific and economic research on climate change in California.”<sup>9</sup> In 2007, alone, PIER has released four research reports on carbon sequestration, and reports on “Climate Change, Extreme Heat, and Electricity Demand in California,” “Economic Growth and Greenhouse Gas Mitigation in California,” “Physical / Statistical and Modeling Documentation of the Effects of Urban and Industrial Air Pollution in California on Precipitation and Stream Flows,” “Assessing Impacts of Rangeland Management and Reforestation of Rangelands on Greenhouse Gas Emissions: A Pilot Study for Shasta County,” and “Health, Safety, and Environmental Screening and Ranking

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<sup>9</sup> <http://www.climatechange.ca.gov/research/index.html>

Framework for Geologic CO<sub>2</sub> Storage Site Selection.” The web site of the California Climate Change Center provides links to many other research papers on climate change.<sup>10</sup>

The University of California’s proposal to create a California Institute for Climate Solutions duplicates efforts already underway by state agencies and would interfere with the coordination of state policy. The proposal to fund the Climate Institute through utility bills constitutes a second tax on the public, albeit only members of the public who take service from investor-owned utilities. As shown below, the following proposals of the University of California are duplicative of state agency activities required by law, and as reported on the state’s “climate change” web site<sup>11</sup>:

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<sup>10</sup> According to the CCCC web site: In 2003, the California Energy Commission's Public Interest Energy Research (PIER) program established the California Climate Change Center to conduct climate change research relevant to the state. This Center is a virtual organization with core research activities at Scripps Institution of Oceanography and the University of California, Berkeley, complemented by efforts at other research institutions. Priority research areas defined in PIER's five-year Climate Change Research Plan are: monitoring, analysis, and modeling of climate; analysis of options to reduce greenhouse gas emissions; assessment of physical impacts and of adaptation strategies; and analysis of the economic consequences of both climate change impacts as well as the efforts designed to reduce emissions. [http://www.climatechange.ca.gov/biennial\\_reports/2006report/index.html](http://www.climatechange.ca.gov/biennial_reports/2006report/index.html)

<sup>11</sup> [http://www.climatechange.ca.gov/policies/state\\_roles.html](http://www.climatechange.ca.gov/policies/state_roles.html)

## PROPOSAL FOR CLIMATE INSTITUTE:

"Priority program areas for research, innovation and education:

- Encouraging investment in and improvement of current and near-term knowledge, education, and technologies
- Stimulating innovation and development of new knowledge, education, and technologies that can dramatically lower greenhouse gas emissions
- Contributing to the attainment of the state's objectives while ensuring economic growth, public health protection, air quality and other environmental protection goals, affordable energy prices, environmental justice, and diverse and reliable energy sources

(page 10)

## STATE MANDATED INITIATIVES:

Pub.Res.Code §§ 25301 & 25305: The Commission shall rely on forecasting and assessments made in preparing the integrated energy policy report

- "for analyzing the success of and developing policy recommendations for public interest energy strategies [which] include .. **pursuing research, development, demonstration, and commercialization of new technologies' ... reducing statewide greenhouse gas emissions ...** ."
- To develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety.

Health & Safety Code § 38561: The state Air Resources Board "shall prepare and approve a scoping plan ... **for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions ...** ." Health & Safety Code §§ 38530, 38560, 38561.

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"five primary research areas ...

3.b.i.Buildings and Homes: Energy Efficiency and Conservation:

- Improved building codes
- Advanced end-use technologies
- Real-time monitoring

(p. 11)

Pub. Res. Code § 25402: The [Energy] commission shall, after one or more public hearings, do all of the following, in order to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy:

**(a) Prescribe**, by regulation, lighting, insulation climate control system, and other **building design and construction standards** that increase the efficiency in the use of energy for new residential and new nonresidential buildings. ...

**(b) Prescribe**, by regulation, **energy conservation design standards** for new residential and new nonresidential buildings.

Pub. Res. Code § 25495: No later than July 31, 1978, the [Energy] commission shall **develop design guidelines for new construction** which include energy conserving options, including, but not limited to, the use of daylighting, heating ventilation and air conditioning economizer cycles,

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	<p>natural ventilation, building envelope solar heat gain control mechanisms, and alternative energy systems such as solar energy for space heating and water heating and load management strategies.</p> <p>Pub. Res. Code § 25401. [The Energy Commission] shall also carry out studies, technical assessments, research projects, and data collection directed to <b>reducing wasteful, inefficient, unnecessary, or uneconomic uses of energy, including, but not limited to ...</b></p> <p style="padding-left: 40px;">(b) Improved building design and insulation...</p> <p style="padding-left: 40px;">(d) Improved appliance efficiency.</p>
<p>3.b.ii. Energy Supply, sources, and Technologies</p> <ul style="list-style-type: none"> <li>• Deploy next-generation solar, wind, biofuel, geothermal and ... hydro power</li> <li>• Reduce costs of carbon capture/sequestration</li> <li>• Next-generation biofuels and distribution networks</li> </ul> <p>(p. 12)</p>	<p>Pub. Res Code § 25401: The [Energy] commission shall continuously carry out studies, research projects, data collection, and other activities required to assess the <b>nature, extent, and distribution of energy resources to meet the needs of the state, including but not limited to, fossil fuels and solar, nuclear, and geothermal energy resources.</b></p> <p>California Dept. of Food &amp; Agriculture:</p> <ul style="list-style-type: none"> <li>• <b>Carbon sequestration</b> projects such as the Rice Straw Utilization Program</li> <li>• Development and support for <b>biofuels</b></li> <li>• Conversion of dairy manure to fuel, lowering global warming from dairy waste</li> <li>• Reducing use of petrochemical-based pesticides and fertilizers that produce <b>greenhouse gas emissions</b></li> </ul>
<p>3.b.iii. Governance, Policy and Management.</p> <ul style="list-style-type: none"> <li>• Transforming the economies of California, the U.S., and the world to operate under climate-change constraints</li> <li>• Harmonization of efforts among several regulatory agencies, as well as private and public sectors, and the combining of innovative governance approaches, attention to environmental justice concerns, and sophisticated legal crafting with a systemic view</li> <li>• Scientific research, monitoring, data management, and assessment for climate-change analyses ... Formal assessments ... are a key component of both</li> </ul>	<p>Health &amp; Safety Code § 38564: The State <b>Air Resource Board shall consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases,</b> manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.</p> <p>The California Technology, Trade and Commerce Agency (CTTCA) is addressing global climate change with its Environmental Technology Export Program (ETEP) by exporting environmental technologies, services and equipment from California firms to improve the global environment</p>

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policy-making and decision-making.

Gov. Code § 12812.6: **The Secretary for Environmental Protection shall coordinate greenhouse gas emission reductions** and climate-change activities in state government.

Gov. Code § 65040.12: **The State Office of Planning and Research shall be the coordinating agency in state government for environmental justice programs.**

Health & Safety Code § 38591: The State Air Resources Board shall convene an environmental justice advisory committee ...

Pub. Res. Code § 25301: At least every two years, **the [Energy] commission shall conduct assessments** and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The commission shall use these assessments and forecasts to **develop energy policies** that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety.

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3.b.iv. Climate Forecasts and Analysis

- Produce predictions of climate-change impacts
- Deploy intensive monitoring system to examine state climate
- Develop regional/local analysis and modeling system

Health & Safety Code § 38510, **The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases.**

Health & Safety Code § 38530: The state board shall adopt regulations to require the monitoring and annual reporting of greenhouse gas emissions; ... **[e]nsure rigorous and consistent accounting of emissions, ...**

Health & Safety code § 38561(d): The state board shall evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, **using the best available economic models, emission estimation techniques and other scientific methods.**

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The California Department of Water Resources addresses, in the California Water Plan Update 2003, **the impacts of climate change on water resources** and identifies potential strategies to reduce these impacts

The State Water Resources Control Board gathers ambient water quality data to assist in **planning responses to changes in climate and water resources** through the Surface Water Ambient Monitoring Program

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3.b.v. Quality of Life: Health and the Environment

- Identify potential health issues from climate change and research mitigation measures, outreach and education
- Review forest management and watershed management practices, explore ways to optimize agriculture production, compare transporting water with desalinization
- Deploy observational network for ecosystem impacts like reductions in snowpack, and the effects of flooding on forest vitality.

Health & Safety Code § 425: The State Department of Health Services shall submit to the State Air Resources Board recommendations for ambient air quality standards reflecting the **relationship between the intensity and composition of air pollution and the health, illness, irritation to the senses, and the death of human beings.**

Health & Safety Code § 39606(2): The State Air Resources Board shall adopt standards of ambient air quality for each air basin in consideration of the **public health, safety, and welfare, including, but not limited to, health, illness, irritation to the senses, aesthetic value, interference with visibility, and effects on the economy.**

Food & Agr. Code § 552: it is the intent of the Legislature that the the Regents of the University of California establish the **Sustainable Agriculture Research and Education Program** to promote more research and education on sustainable agricultural practices, ... and including the analysis of economic factors influencing the long-term sustainability of California agriculture. This article is **intended to foster economically and ecologically beneficial means of** soil improvement, pest management, irrigation, **cultivation, harvesting**, transportation, and marketing for California agriculture ... & § 555. If the Sustainable Agriculture Research and Education Program is established by the regents, it shall be established from existing resources.

Pub. Res. Code § 740: **The State Board of Forestry and Fire Protection shall represent the state's interest in the acquisition and management of state forests** as provided by law and in federal

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land matters pertaining to forestry, and the protection of the state's interests in forest resources on private lands, and shall determine, establish, and maintain an adequate forest policy.

California Dept. of Forestry and Fire Protection: Improving the **carbon storage capability of California's forest land**

- Assisting private forest land owners with carbon storage through **reforestation**
- Vegetation Management Program to prevent large, hot fires which release large amounts of carbon dioxide and threaten habitats and structures
- Fire and Resources Assessment Program to monitor the area of vegetation cover and timberland for the purpose of **assessing carbon storage capacity**

The Department of Fish and Game (DFG) is addressing the issue of adaptation to climate change with **regional conservation planning, watershed planning, fisheries management and restoration**, and biological assessment. The Natural Community Conservation Planning program **promotes a broad-based ecosystem approach to planning** for the protection and perpetuation of biological diversity. It seeks to protect large areas with sufficient habitat diversity and habitat linkages to allow for the migration of species adjusting to changes in local climatic conditions.

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It is somewhat presumptuous of the University of California to suggest it should duplicate research the State has already directed state agencies to perform, implying it can do the job better than other state entities. The legislature has clearly 'occupied the field' of climate change research, however, and "laws passed by the Legislature under its general police power will prevail over regulations made by the regents with regard to matters which are not exclusively university affairs." *Tolman v. Underhill*, 39 Cal. 2d 708, 712 (Cal. 1952).

**3. Nearly All of the Research Proposed To Be Undertaken By The California Institute for Climate Solutions Is Already Being Performed on U.C. Campuses, Through Other Sources of Funding.**

Projects proposed for the California Institute of Climate Change are already underway at the University of California, funded by the Regents and the state legislature,<sup>12</sup> and through grants from private entities. There is no reason to take money from utility ratepayers to support research into climate change. For example:

- U.C. Davis is performing research into:
  - the effect of rising temperatures and less snowpack on the clarity of Lake Tahoe and the local environment;
  - developing strategies for floodplain fish conservation in the Central Valley;
  - the effects of climate change on groundwater quantity and quality, including the use of underground storage space to offset the loss of surface reservoir space;
  - the intrusion of salty seawater up estuaries and into rivers and groundwater aquifers, as sea levels rise, changing critical habitats and threatening freshwater supplies to coastal towns and farms;<sup>13</sup>
  - the transfer of a flood-tolerant gene into a strain of rice;<sup>14</sup>
  - the economic value of carbon sequestration in the soil.
  - dairy waste aeration and its potential benefits<sup>15</sup>
- The Institute for Research on Climate Change and its Societal Impacts (IRCCSI), a University of California (UC) Intercampus Research Program, promotes

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<sup>12</sup> CA CONST. art. 4, § 12 & art. 9, § 9.

<sup>13</sup> <http://climatechange.ucdavis.edu/water.html>

<sup>14</sup> [http://www.eurekalert.org/pub\\_releases/2006-12/bc-ccc113006.php](http://www.eurekalert.org/pub_releases/2006-12/bc-ccc113006.php)

<sup>15</sup> <http://news.ucanr.org/storyshow.cfm?story=951&printver=yes>

research into the societal impacts of climate change (e.g. impacts on water availability, human health, agriculture, etc.)<sup>16</sup>

- U.C. Riverside is studying the pretreatment of advanced cellulosic plants to understand how to best modify their characteristics for optimal integration with advanced microbial systems for conversion into fuel ethanol.<sup>17</sup>
- U.C.L.A. recently hosted a Climate Change Summit where climate change and environmental health experts provided insight on ways climate change such as rising temperatures and severe weather-related events could increase the rates of water- and food-borne illness, infectious diseases, illnesses caused by air pollution, and heat-related illness and death.<sup>18</sup>
- The Department of Energy and the California Energy Commission funded a study by several universities and research institutions, including Stanford University, the University of California and the Scripps Institution of Oceanography, which provides detailed projections of changes in California as temperatures rise around the world because of building concentrations of heat-trapping gases.<sup>19</sup>
- Chevron is funding research by U.C. Davis to develop commercially viable processes for the production of transportation fuels from renewable resources such as new energy crops, forest and agricultural residues, and municipal solid waste.<sup>20</sup>

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<sup>16</sup> <http://universitygateway.llnl.gov/strategic/irccsi/>

<sup>17</sup> <http://www.cert.ucr.edu/>

<sup>18</sup> [http://www.yubanet.com/artman/publish/article\\_68144.shtml](http://www.yubanet.com/artman/publish/article_68144.shtml)

<sup>19</sup> <http://query.nytimes.com/gst/fullpage.html?res=9C05EFD6133FF934A2575BC0A9629C8B63>

<sup>20</sup> [http://investor.chevron.com/phoenix.zhtml?c=130102&p=irol-newsArticle\\_print&ID=906937&highlight=](http://investor.chevron.com/phoenix.zhtml?c=130102&p=irol-newsArticle_print&ID=906937&highlight=)

- BP contributed \$500 million to create the Energy Biosciences Institute (EBI), jointly led by University of California, Berkeley, the Lawrence Berkeley National Laboratory (LBNL) and the University of Illinois at Urbana-Champaign, which initially will focus its research on biotechnology to produce biofuels — that is, turning plants and plant materials, including corn, field waste, switchgrass and algae, into transportation fuels.<sup>21</sup>

#### **4. The Commission Does Not Have Authority To Levy A Tax Through Utility Bills.**

The California Supreme Court supported an earlier Commission decision which denied a utility the right to charge ratepayers for its contributions to colleges and universities:

The commission in its decision observes that "Dues, donations and contributions, if included as an expense for rate-making purposes, become an involuntary levy on ratepayers, who, because of the monopolistic nature of utility service, are unable to obtain service from another source and thereby avoid such a levy. Ratepayers should be encouraged to contribute directly to worthy causes and not involuntarily through an allowance in utility rates.

*Pacific Tele. & Tele. Co. v. Pub. Util. Comm'n* (1965) 62 Cal. 2d 634, 668.

The Commission's authority to create a new charge on ratepayers is circumscribed by Public Utilities Code section 729 and 730, which allow the Commission to investigate a utility's rates and establish new rates, "upon a hearing." The Commission's ratemaking authority is limited to a determination as to the facilities and operation "necessary reasonably and adequately to meet public requirements for service ... ." Any additional power exercised by the Commission must be "cognate and germane to the regulation of public utilities." *So. Calif. Gas. Co. v. Pub. Util. Comm'n*

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<sup>21</sup> [http://www.berkeley.edu/news/media/releases/2007/02/01\\_ebi.shtml](http://www.berkeley.edu/news/media/releases/2007/02/01_ebi.shtml)

(1979) 24 Cal. 3d 653, 656. The proposed financing of “strategies and programs in energy and environmental research, technology development and deployment, climate economics, infrastructure design, socioeconomic impacts and responses, education, public services, and policy action”<sup>22</sup> is not reasonably necessary to meet the public demand for utility service.<sup>23</sup>

The fifth amendment of the U.S. Constitution, applicable to the states through the fourteenth amendment, is “designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960), *quoted in Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (U.S. 2002). While “government may execute laws or programs that adversely affect recognized economic values,” like a tax on property, it may do so only when “the interests of the public . . . require such interference; and . . . the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.” *Goldblatt v. Hempstead*, 369 U.S. 590, 595 (U.S. 1962). In order to evaluate the reasonableness of a regulatory taking, a court considers “the nature of the menace against which it will protect, the availability and effectiveness of other less drastic protective steps, and the loss which appellants will suffer from the imposition of the ordinance.” *Id.* As demonstrated earlier in these Comments, the issue of climate change is being addressed by the State of California and the University of California. There is no

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<sup>22</sup> Appendix A, U.C. Proposal at 3.

<sup>23</sup> See generally, *In The Matter Of Petition Of New Jersey American Water Company, Inc., For An Increase In Rates For Water And Sewer Service And Other Tariff Modifications* (2001) 169 N.J. 181, 195-96; 777 A.2d 46.



justification for forcing the customers of investor-owned utilities to pay for research funded by the State of California and other contributors.

### 3. **An Evidentiary Hearing Is Necessary.**

As more fully explained above and in CFC's earlier appeal of the categorization of this rulemaking, fundamental rights protected by the U.S. and California Constitutions will be affected by the imposition of a tax on ratepayers to support the Climate Institute. Where fundamental rights under the Constitution will be affected by a Commission decision, an adjudicative hearing is required. *Strumsky v. San Diego County Employees Ret. Ass'n*, 11 Cal. 3d 28 (Cal. 1974); *Southern California Edison Co. v. Railroad Com. of California*, 6 Cal. 2d 737 (Cal. 1936).

Assuming *arguendo* that the Commission has authority to take funds from ratepayers under its police power, an adjudicative hearing is required to determine whether the particular circumstances justify the Commission's action. *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 323 (U.S. 2002). Issues would include the nature and effect of climate change on utility service, the availability and effectiveness of other means to fund activities proposed to be undertaken by the University of California, and the loss which consumers will suffer from the imposition of this tax." See e.g., *Goldblatt v. Hempstead*, 369 U.S. 590, 596 (U.S. 1962).

Issues to be considered at hearing include the amount of ratepayer funds to be taken to support the Climate Institute and the benefits to be gained thereby. CFC cannot anticipate what evidence might be developed to support the taking, but evidence of the cost of the taking, to ratepayers and to California as a whole, is relevant, as well as evidence of the value of any potential benefits to be derived from additional research

into areas already being explored by other state agencies. Any findings on this evidence would be adjudicative. The allocation of costs and benefits associated with the Climate Institute among customers, the quantification of benefits, and the method by which costs should be collected are issues which may require adjudicative findings. The allocation of costs between the Climate Institute and other, related research and development programs, may require adjudicative findings, particularly if there are overlapping benefits which may need to be quantified.<sup>24</sup>

## **CONCLUSION**

CFC recognizes the importance of addressing issues presented by climate change, and is proud that California has taken the lead on this important initiative. As Commissioner Bohn recognized in his separate concurrence in the OIR, however, there are other Statewide issues which have a more immediate impact on utility customers and call out for the Commission's attention, e.g. water shortages, high gas prices, finding transmission paths for renewable energy, and making utility service affordable to low-income populations, the working poor, and seniors. The Consumer Federation of California asks the Commission to focus its attention on finding ways to reduce utility rates, rather than putting additional pressure on utility customers' already stretched pocketbooks, and to allow the legislature and other state agencies to determine how best to address the issue of climate change.

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<sup>24</sup> Perhaps the examination of costs and benefits associated with funding the Climate Institute can be undertaken at the same time the Commission considers how to measure the costs and benefits of distributed generation projects, the solar initiative and energy efficiency proceedings (R.04-03-017, R.06-03-004-Phase II, R.04-04-025, R.01-08-028, etc.) See, *Scoping Memo* in R.06-03-004 (April 25, 2006)

Dated this 2<sup>nd</sup> day of November, 2007

CONSUMER FEDERATION OF CALIFORNIA

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to establish the  
California Institute for Climate Solutions

Rulemaking 07-09-008

**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2007, I served by e-mail all parties on the service list of R.07-09-008, true copies of the original of the following document which is attached hereto:

**COMMENTS OF THE CONSUMER FEDERATION OF CALIFORNIA  
ON ORDER INSTITUTING RULEMAKING TO CONSIDER ESTABLISHING  
CALIFORNIA INSTITUTE FOR CLIMATE SOLUTIONS**

The names and e-mail addresses of parties served by e-mail are shown on an attachment. I sent a corrected version of the comments to the same parties on November 6, 2007.

Dated: November 6, 2007

Respectfully submitted,

CONSUMER FEDERATION OF CALIFORNIA

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